

DIGITAL COMPETITION POLICY AND REGULATION IN SOUTH AFRICA

KEY THEMES AND QUESTIONS

The following themes outline key areas for researchers to consider. These themes were identified during a policy roundtable attended by experts from South African universities and the South African Competition Commission. They highlight fundamental questions that are essential for shaping South Africa's policy response.

Competition issues

Structural mapping of digital competition in South Africa

- Spatial overview of both market structure and ownership structure across various South African digital platform markets
- Temporal overview: how firms moved from a base market into adjacent markets
- Consumer adoption: geographic or social features that shape adoption
- Consumer behaviour: paying with data as an attractive means for low-income households and implications for limiting data sharing

Entry into and growth of digital markets in South Africa

- The role of large firms versus start-ups as drivers of digital innovation *across* markets
- Organic versus M&A-based entry into South African digital markets

The scope for entry and expansion of local digital platforms in South Africa:

- Demand-side features that may shape successful entry (this may include case studies of recent platform entrants, such as LekkeSlaap);
- The role of venture capital markets in shaping entry and facilitating particular business models for growth;

The extent of competition between different digital and non-digital markets or market segments in South Africa:

- The factors that shape multi-homing and/or the impact of multi-homing on competition

Approaches to market definition in digital markets

- Matching the new ecosystem concept in the EU with approaches to market definition in South Africa
- Implications of geographic market scope for digital cases, including the broader issue around the treatment of international competitors and local platforms

Market outcomes in South African digital markets

- Price-related trends, including levels and volatility, across digital industries and compared to other industries or markets

Impact of emerging technologies (including AI) on digital platform competition in emerging markets

Mergers

Theories of harm in South African digital merger control

- Unique characteristics or focus of theories compared to other jurisdictions, including data conglomerate effects
- Counterfactuals in these markets
- Distinguishing digital platforms growing from legacy industries and new digital markets: implications of past market power

Relationship between local and international merger control in digital markets

- Impact of merger remedies in other jurisdictions (e.g. Google/FitBit)

The scope and risks associated with ex-post merger intervention in digital markets

Digital merger control in markets prone to tipping

- Should merger control towards cloud computing and AI-related markets function differently to other digital markets?

Entry concerns in SA merger control and lessons for digital mergers and innovation locally and internationally

- Potential competition and attempts at incorporating dynamic competition
- Extent to which merger-based entry should be treated different from merger-based expansion
- Implications for broader merger control; connections/differences with European shift in focus to innovation

Implications of public interest considerations in SA merger control for digital mergers

- National champion arguments or related considerations around the ability of locally-grown tech platforms to compete in international markets
- Public interest concerns for South Africa raised by M&A in Africa more broadly
- Trade-offs against static market power gains for local tech giants

Abuse of dominance

Novel factors in the assessment of digital market power, e.g. can new firms be considered dominant?

Price parity issues and the South African approach (including Booking.com)

- Differential treatment of narrow vs wide parity clauses
- Impact of remedies – both at platform and business users levels

Predatory pricing

- How to evaluate aggressive pricing strategies of digital platforms in light of their business models
- Adapting the analytical framework to fit digital cases

Denial of interoperability and implications for competition

Self-preferencing in South African digital markets

- Contrasting self-preferencing in traditional supermarkets with digital self-preferencing
- Contrasting self and paid preferencing

Excessive sharing of data and the interplay of privacy law and competition policy in data sharing

Tying in digital markets

- Reverse dominance case in Germany and implications for South Africa

Buyer power concerns in South African digital markets

- Link to recent buyer power guidelines

Remedy design to address abuse of dominance in digital markets

- Efficacy of remedies
- The role of interim remedies
- Structural remedies

Welfare standard in South African competition policy towards abuse of dominance in digital markets

- The differential roles of consumers and customers

Regulatory design

South Africa as a case study for an ex-post approach to digital regulation

- Comparison with international approaches – both in the EU and in Africa (including Kenya), consideration of ex-ante vs ex-post distinction (and conditions under which either may be more appropriate)
- Unique country/industry characteristics (locally-grown tech industry, emerging market, etc)

Market inquiries as ‘base’ tool for ‘regulating’ digital markets via the competition regime

- Evolution of the focus, scope and impact of market inquiries in South Africa and implications for digital regulation
- How does South Africa market inquiries differ from tools used elsewhere – possible benefits for purposes of digital regulation
- In what ways might the Online Intermediation Platform Markets Inquiry and the current market inquiry shape overall digital competition policy?

Ex-post assessment of remedies from digital inquiries in terms of market outcomes – for exemplifying, exploiting natural experiment offered by remedies related to fees or treatment of SMMEs

Implications of focus of EU competition policy on encouraging innovation and relation to South African policy and challenges

Relationship between digital competition policy and other regulatory policies relevant for digital competition?

- SA policies dealing with data and data sharing, as well as privacy
- Interplay between market inquiries and industrial policy